

No. 15,268

IN THE

United States Court of Appeals  
For the Ninth Circuit

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CHIN BICK WAH,

*Appellant,*

VS.

UNITED STATES OF AMERICA,

*Appellee.*

On Appeal from the United States District Court  
for the Northern District of California.

BRIEF FOR THE UNITED STATES.

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**I.**

**STATEMENT OF THE CASE.**

**A. THE PROCEEDINGS BELOW.**

Appellant was indicted, together with two co-defendants and six co-conspirators who were not named as defendants, in an indictment containing six counts.

Appellant was named in the first and sixth counts as a defendant. In the first count, appellant was charged, together with Fong Wy Sum and Robert Leonard Levy and numerous co-conspirators, with conspiracy (18 U.S.C. Sec. 371) to defraud the United States concerning the administration of the immigra-

tion and nationality laws and to commit various substantive crimes including illegal entry into the United States, entry by fraud, and false statements in passport applications, visa petitions and visa applications. In the sixth count, appellant was charged with a violation of 18 U.S.C. Sec. 1546 (1952) in that she knowingly made false statements in an application for an immigration visa.

During the trial Fong, appellant's present husband, changed his plea to one of guilty to all counts and was sentenced to a term of imprisonment of three years. Levy was granted a judgment of acquittal notwithstanding the verdict after the jury had disagreed as to him. The jury returned a verdict of guilty as to appellant on both counts and her motions for a new trial and a judgment of acquittal were denied. Appellant was sentenced to a term of imprisonment for one year on each count, to run concurrently. This Court denied appellant's application for bail pending appeal, and she has served two-thirds of her sentence.

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#### B. QUESTIONS PRESENTED.

The following questions have been presented in appellant's brief: (1) Was the evidence insufficient to support the verdict and judgment of the Court? 2. Did the Government fail to prove an essential element of the offenses charged by failing to prove the invalidity of the marriage of appellant and one Jonathan Yee in Hong Kong?

### C. STATEMENT OF FACTS.

#### 1. The Parties and Main Objectives of the Conspiracy.

The main participants in the conspiracy charged were Fong Wy Sum, alias William Fong, wealthy operator of a dairy products company in San Francisco's Chinatown; appellant Chin Bick Wah, Fong's concubine; Jonathan Yee, a World War II veteran, who was Fong's first cousin; and Jean Jow Yee, Jonathan Yee's wife. Lesser conspirators included Robert Levy, Fong's attorney; Yee Shee, Fong's mother; Benton Fong, Fong's brother; Ruby Fong Yee, Fong's sister; and Chin Jung, appellant's aunt.

In essence, the objectives of the conspiracy were that Fong would send Yee to Hong Kong to enter a sham marriage with appellant in order that she could enter the United States posing as the wife of a citizen and become Fong's concubine. Another important objective was expressly made a part of the conspiracy—that in event of questioning by the authorities, the conspirators would counsel together and agree upon false testimony which would prevent discovery of the illegal entry and appellant's deportation. In other words, the objectives were to get appellant here and to *keep* her here.

#### 2. Circumstances Leading Up to the Conspiracy.

In 1939 Fong and his mother arranged for the illegal entry into the United States of Fong's cousin, Jonathan Yee. (Tr. 24-35.) In paying off his debt to Fong, Yee worked for Fong during most of the ensuing years, except for the period of Yee's service in the United States Army in World War II.



In early 1949 Fong informed Yee of the fact that he had begun a mail-order romance with a Chinese girl in Hong Kong whom he was attempting to bring into the United States. (Tr. 41.) Fong said that he had attempted to bring the girl, whom he identified as Chin Bick Wah, into the United States, first as a student nurse and later as the alleged daughter of an American citizen, but that he had been unsuccessful. (Tr. 40, 255-56.) In other conversations in 1949, Fong showed Jonathan Yee and Jean Yee photographs of appellant which he received from her. (Tr. 40, 250-269, 359.)

During this time Fong was married to one Gee King Yip, who testified at the trial that Fong had also showed her the pictures of Chin Bick Wah. (Tr. 327.) Fong had informed Gee King Yip of his desire to bring appellant to this country. (Tr. 41, 262, 361.) In the summer of 1949, Fong's wife discovered a letter in his clothing which had been written by the appellant to Fong. In that letter appellant had asked Fong to "send some money, send some clothes, send some stockings and make arrangements for her to come to the United States." (Tr. 332-334.) Needless to say, a heated argument ensued between Fong and Gee King Yip (Tr. 334) and Fong obtained a post-office box which he used thereafter for his personal mail. (Tr. 335.)

### 3. The Formation of the Conspiracy.

In the latter part of 1950 Fong had a conversation with Jonathan Yee in which he proposed that Yee



secure a sham divorce from his wife, Jean Yee, so that Yee could go to Hong Kong, marry appellant and bring her back to the United States to become Fong's "Wife Number Two." (Tr. 43-45.) There were three reasons why Fong wanted his errand boy to bring the woman over rather than go himself: Yee, as a World War II veteran, would have less difficulty in securing a non-quota visa for an alleged wife (Tr. 54); second, Fong could not, for business reasons, take the time to go to Hong Kong (Tr. 371); and third, Fong was still married to Gee King Yip and apparently intended to remain so, keeping appellant as a concubine. (Tr. 55.)

Fong proposed that he would pay all of the expenses and urged that Jonathan should do this as "a favor for a favor." (Tr. 44.) Yee replied that he would have to check with his wife Jean. She refused to take part in the arrangement and numerous discussions ensued among Fong, his attorney, Fong's mother, Jonathan Yee and Yee's wife. (Tr. 45-47.) Jean Yee finally agreed to the plan on the condition that she would take no active part therein. (Tr. 54.)

#### 4. The Preliminary Steps.

In April, 1951, Yee was sent to Reno, Nevada, to secure the sham divorce from his wife. Just prior to Yee's departure, Fong and Levy instructed Yee and his wife that in the event of questioning by immigration authorities the conspirators should counsel together and agree upon their stories in order to prevent discovery of the illegal scheme. (Tr. 117-118,

395-396.) On May 11, 1951, Yee secured the divorce (Tr. 59-60) for which Fong paid all expenses, including attorneys' fees, witnesses' fees and living expenses. (Tr. 57.) Yee then resumed the permanent residence with his wife which, in fact, he had never abandoned during his purported residence in Nevada. (Tr. 59-60, 229-230, 379.)

Immediately after the divorce, Fong prepared a passport application for Yee, which he signed as Yee's identifying witness. (Tr. 61-62.) In the application Fong and Yee swore falsely that Jonathan Yee was a citizen of the United States and that Fong was not related to Yee. (Tr. 62-64.) During the summer of 1951 Fong executed several letters and telegrams of inquiry to the Passport Division of the Department of State which Jonathan Yee signed. (Tr. 65-67.) Yee's wife assisted in the preparation of the letters. During that summer Yee and his wife continued to live together openly, attending social affairs (Tr. 400) and otherwise conducting themselves as husband and wife. Their second child was conceived during this period. (Tr. 70.)

As soon as Yee's passport was issued, Fong prepared the petition for appellant's immigration visa and supporting documents. (Tr. 71-73 Gov't's Ex. 6.) A photostatic copy of the petition, together with the attached affidavit of support executed by Fong, is contained in the appendix of this brief. The typed material in the petition, including data as to appellant's full name, age and place of birth, was prepared by Fong *prior* to Yee's departure for Hong Kong.

(Tr. 71-73.) Only the handwritten data, including the date of Yee's sham marriage to appellant, remained to be inserted in the petition. (Tr. 73.)

#### 5. Yee's Trip to Hong Kong.

In accordance with his agreement to pay all expenses, Fong purchased Yee's round-trip ticket for \$1,306.80. (Tr. 74, 242-243) and gave Yee \$200 or \$300 for incidental expenses. (Tr. 82.) On October 26, 1951, Fong, his mother and Jean Yee took Yee to the airport where, after a fond farewell from his supposedly divorced wife, Yee departed for Hong Kong. (Tr. 75.)

Upon his arrival in Hong Kong, Yee met the appellant for the first time in his life. (Tr. 79.) Yee had never exchanged letters with appellant, but each recognized the other from the pictures which Fong had thoughtfully supplied for them. (Tr. 79-80.) On the witness stand Yee observed that appellant "already knew what the score was." (Tr. 79.) In attempting to explain what he meant by that comment, he stated that he and appellant had merely exchanged a few words. He could not recall exactly what appellant had said. (Tr. 79-80.)

In November, 1951, Yee sent a cable to Fong asking him for some money and a copy of Yee's divorce decree. Shortly thereafter *appellant*, and not Yee, received money from Fong. (Tr. 83-84.) Later that month Yee placed a telephone call to his wife, with appellant within earshot. Appellant even asked to

speak to Jean Yee, to thank her for what she was doing. (Tr. 401-402.) That same day Yee and appellant called Fong by telephone, and Yee informed Fong that he had decided not to go through with the marriage to appellant. Fong urged Yee to go ahead with the plan, promising he would "do anything" for Yee. (Tr. 85.) Yee summed up the telephone conversation as follows: "So well, he [Fong] finally convinced me, and also Chin Bick Wah, you know." (Tr. 85.) Immediately after the call Yee and appellant discussed the conversation he had held with Fong. (Tr. 85.)

On November 29, 1951, Yee participated in a ceremony of marriage with appellant. Yee's testimony was that at the time of the marriage ceremony he had no intention to become appellant's husband, that his intention was to be a husband in name only, simply to bring her to the United States for Fong. (Tr. 175-176.)

Yee did not live with appellant as her husband in Hong Kong (Tr. 87), although he resided in the same building during part of his stay in Hong Kong. (Tr. 91.) After remaining in Hong Kong long enough to visit relatives who traveled out from the mainland (Tr. 91-92), Yee returned to the United States in February, 1952, where he resumed his permanent residence with his wife, Jean Yee. (Tr. 87-88, 403-404.) Incidentally, Fong had, on several occasions during Yee's absence, inquired of Jean Yee if she had received any news from Yee regarding appellant. (Tr. 391.)



## 6. Appellant's Entry Into the United States.

In March, 1952, the petition for appellant's visa was approved, and she was permitted to execute the final application for non-quota immigration visa. In the application appellant swore falsely that she was married to Jonathan Yee, and that she intended to join her husband, Jonathan Yee, in the United States. (Gov't's Ex. 6.)

The visa was granted and appellant arrived in the United States on March 16, 1952. She was met at the airport by a delegation which included Fong, his relatives, Yee, his six months pregnant wife and their daughter. (Tr. 89, 405, 407.)

Fong arranged a celebration dinner in San Francisco's Chinatown (Tr. 407) which was attended by most of the welcoming delegation. Jean and Jonathan Yee traveled in one automobile, and Fong took appellant in his automobile, stopping on the way to introduce appellant to his mother and to show her his apartment. (Tr. 408.)

Following the dinner, appellant's aunt and uncle took her to their hotel in Oakland, where she was to reside temporarily. (Tr. 411.) The Yee family followed the group to the hotel in Oakland, where the celebration continued. (Tr. 412.) At Fong's instructions, Jonathan Yee signed the hotel register as "Mr. and Mrs. Jonathan Yee," after which he returned to his home in San Francisco with his wife and child. (Tr. 89-90.) After the Yees and other guests departed, Fong remained at the hotel with appellant. (Tr. 412-413.)

## 7. Appellant's Departure From the Original Plan.

Two days after appellant's entry into the United States, appellant and her aunt went to the milk store where Fong's wife, Gee King Yip, was working. During the conversation, appellant asked Fong's wife to give him a divorce, indicating that otherwise she would not "marry" Fong. (Tr. 337-338.) Appellant then berated Fong's wife, scornfully comparing her own hands with those of Gee King Yip, and observing that she would not even want Fong's wife to cook for her. Appellant informed Gee King Yip that after the divorce she would not be able to use the title "Fong Shee" (meaning "wife of Fong"). (Tr. 337-338.) Gee King Yip listened to a few more of appellant's ultimatums, and then told appellant to go away. (Tr. 338-339.)

A few weeks after appellant's arrival Fong had a conversation with Jonathan Yee in which it was apparent that he believed Yee was standing in his way to achieving success with appellant. Fong urged Yee "to lay off so that he and Chin Bick Wah could get together." (Tr. 93-94.) Yee replied that there was nothing he could do about it if appellant did not like Fong, and jokingly observed that he might marry her himself. Needless to say, Fong was quite angry with this departure from the prearranged plan. (Tr. 94.) Around this time, Yee also had a conversation with appellant and her aunt and uncle in which appellant said that she would not "marry" Fong, that she did not like him and did not like the way he looked. (Tr. 92-93.)



Approximately three weeks after appellant's arrival into the United States, she and her aunt visited Jean Yee at the Yees' apartment. Quoting the testimony of Jean Yee, "She [appellant] said she came over to tell me how grateful she was that I stepped aside to give her a chance to come over to the United States, and that she was very grateful." (Tr. 414-415.) In that same conversation the following took place:

"She [appellant] said that Mr. Fong was being unreasonable and all he wanted her to do was just to move right in, into his house. And then she went on to say, 'Where does he expect me to live, he doesn't have a house for me or an apartment or anything.' So then Chan Jueng also said the same thing, he was being quite unreasonable about it, that at least if he had that in mind he should have bought a house or furnished an apartment of some kind." (Tr. 417-418.)

In the latter part of May, 1952, appellant told Jonathan Yee that she wanted to go through another marriage ceremony with Yee, so that she would be more secure about remaining in the United States. (Tr. 96-97.) The second ceremony was performed in Reno, Nevada, and Yee returned to San Francisco that same day, never having interrupted his continuous residence with his wife, Jean Yee. (Tr. 97.)

Three weeks to a month after the first conversation between appellant and Jean Yee, just prior to the birth of Jean Yee's second child, Fong brought appellant to the Yees' apartment for another visit. The

following colloquy took place, quoting the testimony of Jean Yee:

“Q. Do you recall what was said at the conversation?

A. Well, again she [appellant] repeated how grateful she was of my stepping aside and allowing her to come into the United States. And then she also said being that we were alone she spoke a little more freely.

Q. Just say what she said that indicated she spoke more freely.

A. She said that the way it is she would not just go and live with Mr. Fong with no, with nothing legal in her name, and so she said that she wanted at least a building in her name or a \$20,000.00 home. In other words, some sort of security to fall back on.

Q. Did she use the word security?

A. Yes.

Q. In Chinese?

A. Yes. She says as it is now she had been in the United States over a month or two and she said that he wasn't giving her very much spending money.

Q. 'He' meaning whom?

A. Meaning Mr. Fong.

Q. Did she say that?

A. Yes, she said that. And that she wouldn't go through with the arrangement, that she, well, she wanted a little bit more security before she would go to actually living with him.

Q. Go ahead.

A. And also the fact, she says, well, just wait, she told me to be patient, wait a little longer and then as soon as she establishes a certain length

of residence here she would go to Reno and get a divorce from Jonathan.” (Tr. 416-417.)

During June, 1952, appellant and her aunt again came to visit Jean Yee, during which the following took place:

“Q. Did you have any further conversation with Chin Bick Wah at that time?

A. Yes. Well, again she brought up the fact that——

Q. Say what she said.

A. She was very grateful, she said she was very grateful being over here and again Mr. Fong was so unreasonable that she just didn’t know what to do and she was again moaning the fact that——

Q. Just say what she said, don’t describe it, Mrs. Yee.

A. She said she didn’t have very much money to spend and that she was, well again she wanted a house, either a \$20,000.00 or a building in her name before she would go through with it.” (Tr. 419.)

#### **8. The Seattle Episode.**

During the spring and summer of 1952, Jonathan Yee and Jean Yee were experiencing domestic difficulties, doubtless aggravated by the events described herein. (Tr. 97.) These difficulties culminated in Yee’s sudden departure for Seattle with appellant in August, 1952. Yee lived with appellant for approximately a week to ten days. (Tr. 98, 426-427.) Fong, as well as Jean Yee, was quite disturbed with this unexpected turn of events. (Tr. 427-428.)

A few days after their departure, when Fong was also unable to locate Jean Yee, he had a conversation with Jean Yee's sister in which he said that he wanted to find appellant and the Yees and "bring them all back." (Tr. 235.) Fong expressed his anger over appellant's disappearance after "bringing her over and spending a fabulous sum of money." (Tr. 236.) Fong observed that he was now left "holding the bag" (Tr. 236), and promised that when appellant and Yee returned he would have nothing further to do with them because he was losing face among his own people. (Tr. 236.) Picturing himself as an outstanding figure in Chinatown, Fong said that he "did not want to have this woman on his hands again and be disgraced." (Tr. 236.)

The Seattle episode came to an end when Yee called his wife, begged forgiveness and asked her to come to Seattle to bring him and the children home. (Tr. 99, 428-429.) When Jean Yee arrived in Seattle, the following took place:

"Q. Now, did you have a conversation with Jonathan in Chin Bick Wah's presence then?

A. Yes, I was talking mostly to him, asking him, well, why did he have to do something like that, just disappear with her and take the children because the baby was two months old and here it was, the little girl very ill and he said that he was being nagged from all sides, so he decided that was the only way out, and the nagging also came from Chin Bick Wah, saying she would never go through with just living with Bill Fong, I mean, she said she would rather

die first than to live under the same roof with him.

Q. Did Jonathan say that in Chin Bick Wah's presence?

A. Yes, he described everything to me, and she was just weeping." (Tr. 430-431.)

Jean and Jonathan Yee returned from Seattle to San Francisco, bringing appellant with them. (Tr. 431.) Appellant then called Fong on the telephone and Fong immediately came to the Yees' home. Jean Yee gave the following description of what transpired when Fong confronted appellant:

"A. Well, Chin Bick Wah was sitting on a couch. Bill Fong walked over to her and said, 'Why did you have to do this to me, why did you have to run away?'

"And so, well, Chin Bick Wah moved closer to him and started to snuffle a little bit, was crying on his shoulder a little bit and said, 'I had no choice, he pointed a gun at me.' He, referring to Jonathan." (Tr. 433-434.)

When Jean Yee informed her husband of what appellant had said, the following took place:

"A. And so Jonathan said, 'Repeat that,' to Chin Bick Wah, he says, 'Repeat that in front of me and in front of Mr. Fong and everybody.'

"So I says, 'Yes, let's repeat it so we could all hear it once again.' But she wouldn't say any more.

Q. What did she say or do?

A. She started to cry and Mr. Fong was patting her on the shoulder and he just said, 'Well, let's not say any more about it.' " (Tr. 434.)



Jonathan Yee then began unpacking his own suitcases, and when appellant questioned him about it, he replied, "Well, I live here, I am going to stay here." (Tr. 435.) Appellant asked, "What about me?" Yee replied, "Bill Fong, you know, will take care of you, or you could go back to the hotel at Oakland." (Tr. 436.) Appellant's aunt appeared on the scene and berated appellant for "causing all this trouble," reminding appellant that "after all, she came to the United States with the understanding that she was to belong to Bill Fong, and then she had to pull a fast deal like this and disappear." (Tr. 438.) Fong then took appellant and her luggage to the aunt's hotel in Oakland. From that day to the present, Yee and his wife have lived together as husband and wife. (Tr. 102, 439.)

#### **9. Appellant's Acquisition of Property and Position.**

In September, 1952, Fong separated from his wife, Gee King Yip, and in October of that year Fong secured an uncontested divorce decree in Reno, Nevada. (Tr. 260, 339, Gov't's Ex. 15.) In March, 1953, Fong purchased a home in Oakland, which he immediately conveyed to appellant as sole owner. (Tr. 322, Gov't's Ex. 22.) The utilities were all placed in Fong's name (Tr. 310-316), and Fong began renovating the place for occupancy. (Tr. 318.) The next-door neighbors testified that they saw Fong and the appellant living there together about a month after the home was purchased, and that Fong introduced appellant to the neighbors as his wife during the spring and summer of 1953. (Tr. 317-321, 323-324.)



On July 28, 1953, appellant finally secured her divorce from Jonathan Yee. The interpreter at the divorce hearing in Reno, Nevada, was Fong. (Gov't's Ex. 11, p. 2.) It is interesting to note that appellant testified that her grounds for divorce were adultery, in that Jonathan Yee had lived openly with his former wife, and that Jonathan Yee had never supported her. (Gov't's Ex. 11, p. 5.) On October 1, 1953, Fong married appellant. (Tr. 522, Gov't's Ex. 21.)

#### **10. The Attempts to Prevent Appellant's Deportation.**

In December, 1955, appellant was questioned under oath in immigration proceedings. Her testimony is set forth in part at pages 185 to 195 of the transcript of record. Appellant falsely swore that she and Jonathan Yee had lived at the Freemont Hotel in Oakland (her aunt's hotel) continuously up to their trip to Seattle. (Tr. 188.) Appellant also testified that the rent at the hotel was paid by her husband Jonathan Yee. (Gov't's Ex. 12, p. 3.) In response to the direct question, "Do you know how many times your husband [Fong] has been married?" she replied, "I only know of this marriage to me." (Tr. 189.) She was asked if she recalled having had conversations with the first wife of William Fong prior to the time she was divorced from Jonathan Yee, to which she replied that she did not remember. (Tr. 198.)

On April 3, 1956, Fong was questioned by Immigration agents. (Tr. 250-269 and 280-281.) He admitted, as had appellant, that he and appellant had exchanged correspondence before her entry into this

country. (Tr. 252.) However, Fong gave substantially the same false statements as had appellant regarding all other elements of the crime.

Just prior to the return of the indictment herein in April, 1956, Fong and his mother went to the home of Jean and Jonathan Yee, where Fong attempted to induce Jean Yee to testify falsely in the Grand Jury proceedings in order to protect appellant, himself, and the others involved. (Tr. 417-529 and 530-538.) An immigration agent and an interpreter who overheard the conversation gave verbatim accounts at the trial of Fong's attempt to influence the witnesses, during which Fong admitted all of the elements of the conspiracy. Fong demonstrated that he was acting on behalf of appellant as well as himself by using such phrases as "If you, John [Yee], Helen [appellant], I and Bob [Levy] do not admit anything, what can they do? Four or five against one." (Tr. 533.)

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## II.

### ARGUMENT.

#### A. THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE JUDGMENT OF CONVICTION OF CONSPIRACY AND FALSE STATEMENTS.

##### 1. The Proof of the Elements of the Conspiracy.

Appellant concedes that a conspiracy was proved. (Appellant's Op. Br. 18.) However, it is apparently the contention of appellant that her connection with the conspiracy, if any, was tenuous. (Appellant's Op. Br. 19.) Appellant thus finds herself in the difficult position of attempting to convince this Court that

the only reasonable inference to be drawn from the evidence was that she was unaware, during the entire conspiracy, of a scheme, the very objectives of which were to allow her to enter the United States and to remain here in the fraudulently acquired status of a nondeportable alien.

Appellant did not testify at the trial. The bulk of the direct testimony relating to appellant came from two of the main figures in the conspiracy, Jean and Jonathan Yee. Fong, although called by the Government as a witness following his plea of guilty, was prevented from testifying, even against the defendant Levy, by reason of the spouse incompetency rule. (Fong was, of course, still married to appellant at the time of the trial.) However, the transcript of appellant's testimony at the immigration hearing and the testimony of agents who interviewed Fong and who overheard Fong's admissions of the entire criminal conspiracy were further evidence supporting the jury's verdict.

In addition to evidence derived from the four main conspirators, the verdict was supported by the direct testimony of Fong's first wife, Gee King Yip, by documentary evidence, and by testimony of other witnesses, such as the neighbors who established the fact that appellant lived with Fong as his concubine in 1953.

The jury drew the reasonable inference that an intimate relationship had grown up between appellant and Fong in 1949, and that it was their mutual objective that Fong should bring her to this country

from appellant's letter to Fong in 1949, in which she asked for money and gifts and for Fong to make arrangements for her to enter the United States. All of Fong's conduct in the period from 1949 through 1951 compelled the same conclusion. The jury simply refused to believe that Fong would have gone to the trouble and expense of arranging Yee's divorce, the passport application, the trip to Hong Kong, remittances of funds to appellant, and the preparation of the visa petition and supporting documents, unless there had been a prior understanding between appellant and Fong that she was coming to the United States as his concubine.

The visa petition (Gov't's Ex. 6) is particularly damaging to appellant's claim of innocent ignorance of the scheme. In October, 1951, prior to Yee's having met or corresponded with appellant, Fong entered the data as to appellant's full name and date and place of birth in the visa petition. The only reasonable inference which could be drawn from this fact was that appellant herself had supplied the information to Fong as one of the first steps in the execution of the conspiracy. At that same time, Fong executed the affidavit of support for appellant, in which he described appellant as the *wife* of Jonathan Yee. (Gov't's Ex. 6, set forth in Appendix.)

Appellant's conduct in November, 1951, at the time of Yee's telephone calls to his wife and Fong regarding his reluctance to go ahead with the plan, is inconsistent with her present claim that she was the innocent pawn in the transaction. Appellant knew



that Fong was the moving force in the scheme, and that Yee was simply going through with the marriage in accordance with Fong's instructions. This was also borne out by Yee's testimony that he did not live with her as her husband during the two months he remained in Hong Kong.

The activities immediately following appellant's arrival in the United States dispel any possible doubt as to her knowing participation in the scheme. Jean and Jonathan Yee conducted themselves as husband and wife at the airport, at the celebration dinner and in their departure from the hotel. At that same time appellant and Fong were enacting the roles which they had created for themselves in the conspiracy, traveling together to meet his mother and see his apartment, and remaining in the hotel as the guests departed.

It is true that during the months from March, 1952, when appellant arrived, to August, 1952, when the Seattle episode took place, appellant demonstrated that she intended to alter the original plan, attempting to force Fong to give her financial security and the role of Number One Wife, rather than Wife Number Two. Appellant's bold confrontation of Fong's wife, her use of Jonathan Yee and her refusal to "move right in with Fong" (Tr. 417-418) all evince her cleverness in working to achieve a more advantageous position than Fong had planned for her. In appellant's conversations with Jean Yee, which are set forth in detail in this brief, appellant's knowledge of the illegal scheme from its inception is proved be-

yond question. The Seattle episode is but another example of appellant's machinations within the framework of the conspiracy. She achieved these ends, of course, when Fong divorced his wife, conveyed the Oakland property to appellant and, after living with her for seven or eight months, married her in October, 1953.

The secondary element of the conspiracy, i.e., the matching of false testimony in order to prevent discovery of the fraud and appellant's deportation, was carried into execution in 1955 and 1956, when appellant and Fong each made false statements to the immigration authorities. Appellant's sworn statement at the hearing that she and Jonathan Yee had lived in the hotel in Oakland continuously up to the time of the Seattle trip was proven false by the testimony by Jean and Jonathan Yee that Yee had never lived with appellant in the hotel, residing at his home in San Francisco with his wife and children. Appellant's testimony at the hearing that Jonathan Yee had paid the room rent at the hotel was specifically refuted by Yee on the witness stand (Tr. 128) and by appellant's divorce hearing testimony. Appellant also lied under oath when she testified that she had no knowledge of Fong's prior marriage. Similarly, appellant testified evasively and fraudulently when she claimed that she did not remember ever having a conversation with Fong's first wife. (See testimony of Gee King Yip, Tr. 337-339.)

It was proved that the other conspirators had *expressly* agreed to counsel together and give false tes-



timony in the event of questioning by immigration authorities. From this and from appellant's conduct throughout, the jury drew the reasonable inference that appellant shared their mutual objective and had, at the immigration hearing, acted in furtherance of the conspiracy. Her false testimony at the hearing was substantially the same as Fong's statements to the immigration officers. It was also identical with the statements which Fong urged the Yees to give before the Grand Jury in April, 1956.

There is no merit to appellant's contention that the conspiracy came to an end at the moment of her entry into the United States. Even if we were to ignore the agreement to give false testimony to immigration officers, it is clear that the conspiracy was, as charged in the indictment, one that would continue so long as appellant was in the United States concealing her status as a deportable alien. It has been held that a conspiracy to effect the illegal entry of aliens does not cease at the time of entry. *Lew Moy v. United States*, 237 Fed. 50 (8th Cir. 1916). The case at hand is even stronger than the *Lew Moy* case since the objectives here were not simply to effect the illegal entry, but to maintain a fraudulently acquired status. On later activities designed to insure the continued and undiscovered operation of a conspiracy, see also *Zamloch v. United States*, 193 F.2d 889, 892 (9th Cir. 1952).

## 2. The Proof of the Substantive Charge of False Statements in the Visa Application.

In the sixth count of the indictment appellant was charged with knowingly and wilfully making false statements in her visa application, including statements that she was married to Jonathan Yee and that she intended to join her husband Jonathan Yee in the United States. Appellant executed the visa application in March, 1952, just prior to her entry into the United States.

When appellant swore that she was married to Yee, that statement was false. As the Supreme Court observed in *Lutwak v. United States*, 344 U.S. 604 (1953) the common understanding of a marriage which Congress must have had in mind when it made provision for "alien spouses" in the immigration laws is that the parties have undertaken to live together and assume certain duties as husband and wife. (344 U.S. 611.) In the present case the conclusion was inescapable that neither appellant nor Yee participated in the marriage ceremony with the intention of taking on such a relationship. Thus, and again we quote from the *Lutwak* opinion at 344 U.S. 611:

"When [appellant] stated that [she] was married, and omitted to explain the true nature of [her] relationship, [her] statement did, and was intended to, carry with it implications of a state of facts which were not in fact true."

In the *Lutwak* case the Supreme Court also approved the decision in *United States v. Rubenstein*, 151 F.2d 915 (2d Cir. 1945) as holding that:

“Where two persons entered into a marriage solely for the purpose of facilitating the woman’s entry into this country, and with no intention by either party to enter into the marriage relationship as it is commonly understood, for the purposes of the case they were *never married at all.*” 344 U.S. 612-613. (Emphasis added.)

Thus, regardless of the legal consequences of the Hong Kong marriage ceremony under other circumstances, appellant’s statement in the visa application that she was married to Yee was false and fraudulent.

It is unnecessary to review the mass of evidence from which the jury drew the reasonable inference that appellant knowingly lied when she swore in the visa application that she intended to join her husband Jonathan Yee in the United States. There was no conflict in the evidence on this point. Appellant intended to join Fong rather than Yee, and never did, in fact, live with Yee except for the short Seattle episode which arose from a situation which developed long after she had executed the visa application.

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**B. IT WAS NOT INCUMBENT UPON THE GOVERNMENT TO PROVE THE INVALIDITY OF APPELLANT’S MARRIAGE TO YEE IN HONG KONG.**

Appellant argues that the Government failed to prove an essential element of the offenses charged by failing to prove that appellant’s Hong Kong marriage was invalid under the laws of Hong Kong. This argument is based upon an erroneous view of the

offenses charged in the indictment. Appellant was tried and convicted of conspiracy to defraud the United States concerning its governmental function of administration of the Immigration and Nationality laws and the administration of the State Department Foreign Service and Justice Department Immigration Service, and of conspiracy to commit substantive offenses of false statements.

The immigration laws of the United States contain provisions for the entry of the alien spouses of an American citizen.

8 U.S.C. Sec. 213(a) (1946), as reenacted in 8 U.S.C. Sec. 1181(a) (1952);

8 U.S.C. Sec. 204(a) (1946), as reenacted in 8 U.S.C. Sec. 1101(a) (27) (A) 1952;

8 U.S.C. Sec. 209 (1946) as reenacted in 8 U.S.C. Sec. 1155 (1952).

In determining whether or not appellant conspired to defraud the United States by claiming that she was the wife of Yee within the meaning of the immigration laws, the legal consequences of the marriage ceremony under Hong Kong or American law are immaterial. The Supreme Court has held that if the parties to a marriage ceremony did not intend to enter the full marriage relationship as it is commonly recognized, an assertion that they are married, when used to secure entry into the United States, is fraud upon the Government. *Lutwak v. United States*, 344 U.S. 604 (1953).

In the *Lutwak* case the defendant conspired to effect the entry of aliens into the United States under



the provisions of the War Brides Act, 8 U.S.C., Sec. 232 (1946). The Court assumed that the defendants were validly married under the laws of France. However, the parties did not intend to live together in the normal husband and wife relationship and planned to take the necessary steps to dissolve the marriage after entry.

The defendants in the *Lutwak* case urged the proposition that a marriage valid where celebrated is valid everywhere unless incestuous, polygamist or otherwise declared void by statute, citing *Loughran v. Loughran*, 292 U.S. 216, 223 (1934), and the *Restatement of Conflict Laws*, Sections 121, 132 and 134. Appellant has made the identical argument herein. (Appellant's Op. Br. p. 28 ff.) In reply to appellant's argument we need only repeat the language of the Supreme Court in the *Lutwak* case at 344 U.S. 611:

"We do not believe that the validity of the marriage is material. No one is being prosecuted for an offense against the marital relation. We consider the marriage ceremonies only as a part of the conspiracy to defraud the United States and to commit offenses against the United States."

The Supreme Court reasoned in *Lutwak* that in permitting the alien spouses of citizens to enter this country without quota limitations, Congress was concerned with a bona fide marital relationship in which the parties intended to become and remain husband and wife. Otherwise aliens would be provided with an easy means of circumventing the immigration laws

by fake marriages. The Court's reasoning is equally applicable to the present case.

In *United States v. Rubenstein*, 151 F.2d 914 (2d Cir.), cert. denied, 326 U.S. 766 (1945) the issue was whether a marriage, valid where celebrated, was valid for purposes of the immigration laws where the parties never intended to assume the marital relationship. The Court stated:

“The statute is not concerned with marriage, merely as marriage; . . . if the spouses at the time of the wife's entry intend that the responsibility shall end as soon as possible, they have evaded the statute by suppressing a material fact; and the suppression is a fraud even though the marriage is valid.”

*United States v. Rubenstein*, 151 F.2d 915, 918 (2d Cir. 1945).

Thus, the existence of a legal relationship will not prevent a conviction of fraud, where the relationship itself was the means of accomplishing the fraud.

*Lutwak v. United States*, 344 U.S. 604 (1953);  
*United States v. Weinberg*, 226 F.2d 161 (3d Cir. 1955);

*United States v. Rubenstein*, 151 F.2d 914 (2d Cir.); cert. den. 326 U.S. 766 (1945).

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### III.

#### CONCLUSION.

The evidence in this case was sufficient to support the jury's verdict that appellant was guilty of con-



spiracy and false statements. More than a dozen witnesses testified to conduct and declarations by appellant and the other conspirators which proved beyond a doubt that appellant conspired to and did enter the United States by fraud and maintain her nondeportable status by false statements. In the face of this evidence appellant did not choose to take the witness stand or offer any other evidence in her own behalf. Appellant now concedes that the conspiracy was proved, but urges that her connection with it was tenuous. The evidence proved her connection was that of an active, knowing conspirator.

Appellant contends that the Government was required to prove that her marriage was invalid. This is the very contention rejected by the Supreme Court in an identical case.

The judgment of conviction should be affirmed.

Dated, San Francisco, California,

March 20, 1957.

Respectfully submitted,

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**(Appendix Follows.)**

The first part of the paper is devoted to a general discussion of the problem of the origin of life. It is shown that the problem is one of the most important and most difficult in the history of science. The author discusses the various theories of the origin of life, and shows that the most plausible is the theory of spontaneous generation. This theory is based on the fact that life is a complex of many different parts, and that these parts are all derived from a common ancestor. The author also discusses the problem of the origin of the first living organisms, and shows that the most plausible theory is the theory of abiogenesis. This theory is based on the fact that life is a complex of many different parts, and that these parts are all derived from a common ancestor.

The second part of the paper is devoted to a detailed discussion of the theory of spontaneous generation. The author shows that this theory is based on the fact that life is a complex of many different parts, and that these parts are all derived from a common ancestor. The author also discusses the problem of the origin of the first living organisms, and shows that the most plausible theory is the theory of abiogenesis. This theory is based on the fact that life is a complex of many different parts, and that these parts are all derived from a common ancestor.

## Appendix.

